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Attorneys for the Plaintiff
Nina Afrasiabi

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**NINA AFRASIABI, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiffs,

v.

**LAW OFFICES OF BURG &
BROCK, INC., A.P.L.C.,**

Defendant.

Case No.: '12CV1864 W WVG

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT TO
THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227, ET
SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. NINA AFRASIABI (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of LAW OFFICES OF BURG & BROCK, INC., A.P.L.C. (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.
2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331.
3. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendant is subject to personal jurisdiction in the County of San Diego, State of California.

NATURE OF THE CASE

4. In an effort to promote the business for its law firm, Defendant engaged in an especially pernicious form of marketing: the transmission of unauthorized advertisements, in the form of “text messages” to the cellular telephones of consumers across the nation.
5. By effectuating these text messages (hereinafter, “wireless spam” or “SMS Spam”), Defendant has caused such consumers actual harm, not only because consumers were subjected to the aggravation and invasion of privacy that necessarily accompanies unsolicited wireless spam, but also because consumers frequently have to pay their cell phone service providers for the receipt of such wireless spam.
6. Plaintiff, on behalf of himself and a nationwide class of similarly situated persons, brings this suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the “TCPA”), which prohibits unsolicited text calls to cell phones.
7. Plaintiff and the Class and the Sub-Class seek injunctive relief and an award of statutory damages, together with costs and reasonable attorney’s fees.

PARTIES

1 8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of
2 California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47
3 U.S.C. § 153 (10).

4 9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times
5 mentioned herein was, a corporation whose principal place of business and State of
6 incorporation are in Los Angeles, California. Defendant, is and at all times mentioned
7 herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10).
8 Defendant provides legal services to consumers. Plaintiff alleges that at all times relevant
9 herein Defendant conducted business in the State of California and in the County of San
10 Diego, and within this judicial district.

11 **FACTUAL ALLEGATIONS**

12 10. In recent years, marketers, who often have felt stymied by federal or state laws limiting
13 solicitations over residential telephones, facsimile machines, and e-mails, have looked to
14 alternative technologies through which to send bulk solicitations cheaply.

15 11. One of the newest types of such bulk marketing is to advertise through Short Message
16 Services. The term "Short Message Service" or "SMS" describes a messaging system that
17 allows cellular telephone subscribers to use their cellular telephones to send and receive
18 short text messages, usually limited to 160 or so characters.

19 12. An "SMS message" is a text message call directed to a wireless device through the use of
20 the telephone number assigned to the device. When an SMS message call is successfully
21 made, the recipient's cell phone typically rings, alerting him or her that a call is being
22 received. As cellular telephones are inherently mobile and are frequently carried on their
23 owner's person, calls to cellular telephones, including SMS messages, may be received by
24 the called party virtually anywhere worldwide.

25 13. Unlike more conventional solicitations, wireless spam actually costs its recipients money,
26 because cell phone users must frequently pay their respective wireless service providers
27 either for each text message call they receive or for a text plan that includes a specified
28 number of messages, regardless of whether or not the message is authorized.

1 14. In recent months, Defendant and their agents, using an automatic telephone dialing
2 system, caused mass amounts of wireless spam calls to be made to the cell phones of
3 consumers across the country, advertising various services performed by Defendant.

4 15. Plaintiff maintains cellular service through a common cellular telephone service provider.
5 Plaintiff has maintained this cellular telephone for a period of time.

6 16. On July 23, 2012, Defendant, through its agents, sent Plaintiff a text message concerning
7 the advertisement of certain additional products offered by Defendant. This text message
8 was unsolicited.

9 17. The body of the initial unsolicited text message to Plaintiff stated:

10 "You will receive MMS messages from Law offices of Burg & Brock, Inc. on
11 short code 76000. Reply STOP to 70000 to cancel."

12 18. Plaintiff then responded to Plaintiff's unsolicited text message with the word "Stop".

13 19. Defendant then proceeded to send Plaintiff another unsolicited text message

14 20. The body of the second unsolicited text message to Plaintiff stated:

15 "All-In-1 Info Alerts: Your mobile number has been blocked from receiving any future
16 messages from 76000. 1-866-866-0009."

17 21. Plaintiff did not reply to this second text message.

18 22. Defendant then sent Plaintiff a third unsolicited text message containing an image of
19 Defendant's website.

20 23. Plaintiff did not respond to this third unsolicited text message.

21 24. Defendant then sent Plaintiff yet another unsolicited text message.

22 25. The body of this final unsolicited text message stated:

23 "Law offices of Burg & Brock, Inc.:

24 If an Emergency Occurs Please

25 Text Lawyer to 70000

26 Text Accident to 70000

27 Text STOP to 70000 to cancel."
28

26. This series of unsolicited text message placed to Plaintiff's cellular telephone was placed via an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a) (1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

27. Plaintiff alleges on information and belief that Defendant's ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and, the capacity to dial such numbers.

28. The telephone number that the Defendant, or its agents, called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

29. These telephone calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

30. Plaintiff did not provide Defendant or its agents prior express consent to receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of herself and on behalf of and all others similarly situated ("the Class").

32. Plaintiff represents, and is a member of the Class, consisting of all persons within the United States who received any unsolicited text messages and/or any other unsolicited text messages from Defendant without prior express consent.

33. Plaintiff also brings this action on behalf of herself and on behalf of all others similarly situated and is a member of ("the Sub-Class").

34. Plaintiff represents, and is a member of the Sub-Class, consisting of all persons within the United States who sent a reply text message, "STOP", or something similar, to Defendant in response to a text message sent by Defendant, and then received an unsolicited confirmatory text message from Defendant, which text message was not made for emergency purposes or with the recipient's prior express consent, within the four years prior to the filing of this Complaint.

1 35. Defendant and its employees or agents are excluded from the Class and Sub-Class.
2 Plaintiff does not know the number of members in the Class and Sub-Class, but believes
3 the Class and Sub-Class members number in the hundreds of thousands, if not more.
4 Thus, this matter should be certified as a Class action to assist in the expeditious litigation
5 of this matter.

6 36. Plaintiff and members of the Class and Sub-Class were harmed by the acts of Defendant
7 in at least the following ways: Defendant, either directly or through its agents, illegally
8 contacted Plaintiff and the Class and Sub-Class members via their cellular telephones by
9 using marketing and artificial or prerecorded voice messages, thereby causing Plaintiff
10 and the Class and Sub-Class members to incur certain cellular telephone charges or reduce
11 cellular telephone time for which Plaintiff and the Class and Sub-Class members
12 previously paid, and invading the privacy of said Plaintiff and the Class and Sub-Class
13 members. Plaintiff and the Class and Sub-Class members were damaged thereby.

14 37. his suit seeks only damages and injunctive relief for recovery of economic injury on
15 behalf of the Class and Sub-Class, and it expressly is not intended to request any recovery
16 for personal injury and claims related thereto. Plaintiff reserves the right to expand the
17 Class and Sub-Class definition to seek recovery on behalf of additional persons as
18 warranted as facts are learned in further investigation and discovery.

19 38. The joinder of the Class and Sub-Class members is impractical and the disposition of their
20 claims in the Class and Sub-Class action will provide substantial benefits both to the
21 parties and to the court. The Class and Sub-Class can be identified through Defendant's
22 records or Defendant's agents' records.

23 39. There is a well-defined community of interest in the questions of law and fact involved
24 affecting the parties to be represented. The questions of law and fact to the Class and Sub-
25 Class predominate over questions which may affect individual Class and Sub-Class
26 members, including the following:

- 27 a) Whether, within the four years prior to the filing of this Complaint, Defendant or
28 its agents sent any unsolicited text messages to the Class (other than a text

1 message made for emergency purposes or made with the prior express consent of
2 the called party) to a Class member using any automatic dialing and/or SMS
3 texting system to any telephone number assigned to a cellular phone service;

4 b) Whether, within the four years prior to the filing of this Complaint, Defendant or
5 its agents sent any unsolicited confirmatory text messages to the Class (other than
6 a text message made for emergency purposes or made with the prior express
7 consent of the called party) to a Class member using any automatic dialing and/or
8 SMS texting system to any telephone number assigned to a cellular phone service;

9 c) Whether Plaintiff and the Class members were damaged thereby, and the extent of
10 damages for such violation; and

11 d) Whether Defendant and its agents should be enjoined from engaging in such
12 conduct in the future.

13 40. As a person that received at least one unsolicited text message without Plaintiff's prior
14 express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will
15 fairly and adequately represent and protect the interests of the Class in that Plaintiff has no
16 interests antagonistic to any member of the Class.

17 41. As a person that received at least one unsolicited confirmatory text message without
18 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the Sub-
19 Class. Plaintiff will fairly and adequately represent and protect the interests of the Sub-
20 Class in that Plaintiff has no interests antagonistic to any member of the Sub-Class.

21 42. Plaintiff and the members of the Class and Sub-Class have all suffered irreparable harm as
22 a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the
23 Class and Sub-Class will continue to face the potential for irreparable harm. In addition,
24 these violations of law will be allowed to proceed without remedy and Defendant will
25 likely continue such illegal conduct. Because of the size of the individual Class and Sub-
26 Class member's claims, few, if any, Class and Sub-Class members could afford to seek
27 legal redress for the wrongs complained of herein.
28

43. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

44. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal and California law. The interest of Class and Sub-Class members in individually controlling the prosecution of separate claims against Defendant is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

45. Defendant has acted on grounds generally applicable to the Class and Sub-Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

46. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

47. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

48. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class and Sub-Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

49. Plaintiff and the Class and Sub-Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

50. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

51. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

52. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class and Sub-Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

53. Plaintiff and the Class and Sub-Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class and Sub-Class members the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class and Sub-Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

54. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Dated: July 24, 2012

Respectfully submitted,

HYDE & SWIGART

By: s/ Joshua B. Swigart
Joshua B. Swigart, Esq.
Attorney for Plaintiff

HYDE & SWIGART
San Diego, California

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Nina Afrasiabi, Individually and on Behalf of all Others Similarly Situated

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

Law Offices of Brug & Brock, Inc., A.P.L.C.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'12CV1864 W WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. § 227, et seq 18:1391 Personal injury (jao)

Brief description of cause:

Violation to the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

5,000,001.00+

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes

☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/30/2012

s/Joshua B. Swigart

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.